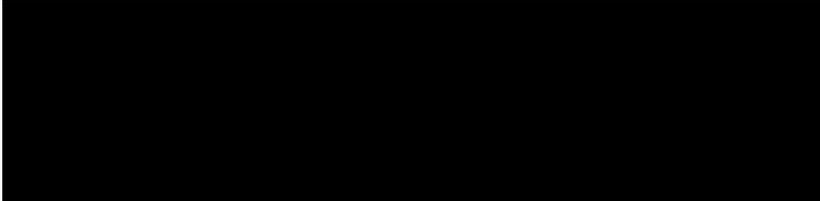


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FILE: [REDACTED] Office: NEBRASKA SERVICE CENTER Date: JAN 10 2006
LIN 04 144 51607

IN RE: Petitioner: [REDACTED]
Beneficiary: [REDACTED]

PETITION: Immigrant Petition for Alien Worker as an Alien of Extraordinary Ability Pursuant to
Section 203(b)(1)(A) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(1)(A)

ON BEHALF OF PETITIONER:
[REDACTED]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The employment-based immigrant visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office on appeal. The appeal will be dismissed.

The petitioner seeks classification of the beneficiary as an employment-based immigrant pursuant to section 203(b)(1)(A) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(1)(A), as an alien of extraordinary ability in business. The record shows that the petitioner employs the beneficiary as Executive Vice President of Manufacturing and Sourcing for Victoria's Secret Productions and as Chief Sourcing Officer of Intimate Apparel for Limited Brands, Incorporated (hereinafter "Limited Brands").

Finding the evidence submitted with the petition insufficient to establish the beneficiary's eligibility, the director issued a Request for Evidence (RFE) on May 6, 2004, to which the petitioner timely responded with additional evidence. The director determined that the evidence submitted initially and in response to the RFE failed to establish that the beneficiary had achieved the requisite sustained acclaim and denied the petition. On appeal, counsel contends that the director failed to give sufficient weight to certain documents submitted and that the beneficiary meets more than three criteria of sustained national or international acclaim. Counsel's claims do not overcome the deficiencies of the petition and the appeal will be dismissed. We address the evidence submitted initially and in response to the RFE and counsel's contentions in the following discussion of the regulatory criteria relevant to the petitioner's case. Counsel and the petitioner do not claim that the beneficiary meets any criteria not discussed below.

Section 203(b) of the Act states, in pertinent part:

(1) Priority Workers. -- Visas shall first be made available . . . to qualified immigrants who are aliens described in any of the following subparagraphs (A) through (C):

(A) Aliens with Extraordinary Ability. -- An alien is described in this subparagraph if --

- (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
- (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
- (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

Specific supporting evidence must accompany the petition to document the "sustained national or international acclaim" that the statute requires. 8 C.F.R. § 204.5(h)(3). An alien can establish sustained national or international acclaim through evidence of a "one-time achievement (that is, a major, international recognized award)." *Id.* Absent such an award, an alien can establish the necessary sustained acclaim by meeting at least three of ten other regulatory criteria. *Id.* However, the weight given to evidence submitted to fulfill the criteria at 8 C.F.R. § 204.5(h)(3), or under 8 C.F.R. § 204.5(h)(4), must depend on the extent to which such evidence demonstrates, reflects, or is consistent with sustained national or international acclaim at the very top of the

alien's field of endeavor. A lower evidentiary standard would not be consistent with the regulatory definition of "extraordinary ability" as "a level of expertise indicating that the individual is one of that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2).

(iii) Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.

As evidence of the beneficiary's eligibility under this criterion, the petitioner submitted two documents. The first is a printout of an article from the website of the Board of Investment (BOI) of [REDACTED]. The article is dated March 20, 2003 and entitled, "'Victoria's Secret' Executive Vice President [REDACTED]". The article reports that the beneficiary chaired a press conference organized by the Export Development Board (EDB) of [REDACTED] on March 14, 2003. The article includes a summary of the beneficiary's career and work for the petitioner and quotes his comments on [REDACTED] standing as an apparel manufacturing country. The second article is entitled "'Victoria's Secret for [REDACTED] Apparel'" and was published in the March 17, 2003 edition of *Daily Mirror*. The article was submitted as a printout from the website of the *Daily Mirror* and features a photograph of the petitioner and an EDB consultant. This article repeatedly quotes the beneficiary's comments on Sri Lanka's accomplishments and prospects as an apparel manufacturing country.

While these articles are about the petitioner and his work, the record does not establish that the sources of the articles are professional, major trade publications or other major media. Counsel states that the first article was posted on the website of the [REDACTED] BOI, but the submitted printout does not identify BOI as an official governmental body in [REDACTED] or provide any other evidence that its website is a professional or major trade publication. Similarly, counsel identifies the *Daily Mirror* as a [REDACTED] newspaper, but provides no documentation of its national circulation or other evidence that it is a form of major media in that country.

In addition, the publication of just two articles reporting on the same event does not demonstrate the beneficiary's sustained national acclaim in [REDACTED] or his international acclaim. Rather, the articles indicate that the beneficiary received limited coverage for his chairmanship of a single press conference in Colombo, [REDACTED] in 2003. Accordingly, the beneficiary does not meet this criterion.

(v) Evidence of the alien's original scientific, scholarly, artistic, athletic, or business-related contributions of major significance in the field.

The petitioner did not initially claim that the beneficiary met this criterion. In response to the RFE, however, the petitioner submitted four recommendation letters from apparel industry executives who have worked with the beneficiary. While such letters provide relevant information about an alien's experience and accomplishments, they cannot by themselves establish the alien's eligibility under this criterion because they do not demonstrate that the alien's work is of major significance in his field beyond the limited number of individuals with whom he has worked directly. Even when written by independent experts, letters solicited by an alien in support of an immigration petition carry less weight than preexisting, independent evidence of major contributions that one would expect of an alien who has achieved sustained national or international acclaim. Accordingly, we review the letters as they relate to other evidence of the petitioner's contributions.

██████████ President of Maidenform Incorporated, states that he formerly worked with the beneficiary at the Warnaco Group, Incorporated. Mr. ██████████ explains, “[The beneficiary] has unique and varied training and he has worked with some of the leading companies in the retail fashion and manufacturing industries such as Maidenform Inc[.], Warnaco, VF Corp[.], Triumph. His work in worldwide sourcing, manufacturing coordination and development of efficiencies has led to groundbreaking increase in profits, quality improvements and commercial success.” Mr. ██████████ provides no further details or specific examples of how the petitioner’s work has led to such “groundbreaking” increases.

██████████ Vice President and General Manager of Private Brands for VF Intimates, LP, states that he formerly worked with the beneficiary at an entity which he identifies as “VSS.” Mr. ██████████ notes that the beneficiary has “worked on projects such as efficient manufacturing, developed sourcing best practices and organizational improvements.” Mr. ██████████ adds that the petitioner’s current work “involves Concept-To-Market supply chain improvements, which is a key component in the development of Victoria’s Secret maintaining its leadership position.” Mr. ██████████ states that the beneficiary’s “reputation and international renown continues to grow” and that he continues “to impress those who come in contact with him.” Mr. ██████████ does not, however, discuss any specific accomplishments of the beneficiary that have had a major impact on the intimate apparel industry in the United States or internationally.

██████████ Chief Executive of Sara Lee Courtaulds Intimates, explains that he has conducted numerous business transactions with the beneficiary since 2002 and states:

I have always been impressed with ██████████ business acumen, technical textile ability, and ethical standards, which combined have produced consistent, superior business results. ██████████ reputation is well known and growing within the industry, both in the United States and internationally. His exceptional abilities, achievement of results, and outstanding work ethic continue to impress those who come into contact with him. He has provided leadership to implement world-class industry practices and I consider him a top professional in our industry.

██████████ provides no specific examples of how the beneficiary has led the implementation of world-class industry practices.

██████████ Chairman of MAS Holdings (Private) Limited, states that he first met the beneficiary in 1999 when he joined Victoria’s Secret. Mr. ██████████ explains that the beneficiary worked on “restructuring the sourcing division of Victoria’s Secret where he played a leading role developing the sourcing strategy for the company. I believe M██████████ work has led to streamlining of the supply chain of Victoria’s Secret and this has resulted in the company delivering fashionable products faster into the marketplace.”

We note that one sentence is repeated verbatim in all four of these letters and two sentences are repeated verbatim in three of the letters. This duplication suggests that the text of the letters is not entirely the authors’ own and detracts from their probative value.

The petitioner also submitted a “Report on Extraordinary Ability” of the beneficiary written by Educated Choices, LLC. The authors of the report do not state that they have any experience or expertise in the apparel industry at the executive level. The authors state that the report was prepared with reference to the U.S. Department of Labor 2001 Occupational Outlook Handbook and in consultation with two retail executives. The report lists the beneficiary’s major accomplishments, but does not explain how the authors gained knowledge of

these achievements. The report quotes the two retail executives as finding the beneficiary to have “the highest level of ability in the fashion executive arena” and as being “highly skilled when compared to others of his kind worldwide,” but neither the executives nor the report authors state that the petitioner’s abilities and skills have led to accomplishments that have made a major impact on his field. In addition, the report is dated July 2, 2001, nearly three years before this petition was filed, and does not demonstrate the requisite sustained acclaim.¹

The petitioner submitted several documents that establish the stature and commercial success of Limited Brands and Victoria’s Secret and these companies’ contributions to the apparel industry and the specialty market of women’s intimate apparel. The record also shows that during the beneficiary’s tenure at Warnaco (his previous employer) and over the course of his employment with the petitioner, Warnaco’s net revenues from intimate apparel increased each year and Victoria’s Secret’s net sales increased every year except 2001. Yet the evidence submitted does not persuasively establish that these commercial successes can be directly or substantially attributed to the beneficiary. None of the submitted press articles regarding Limited Brands and Victoria’s Secret quote or identify the beneficiary.

In sum, the relevant evidence indicates that the beneficiary is a very experienced and skilled apparel executive who has been employed by at least two successful companies. The record does not establish, however, that the beneficiary has made original business related contributions of major significance to his field in a manner consistent with sustained national or international acclaim. Accordingly, the beneficiary does not meet this criterion.

(viii) Evidence that the alien has performed in a leading or critical role for organizations or establishments that have a distinguished reputation.

Counsel claims the beneficiary meets this criterion through his employment with the petitioner. The petitioner submitted a copy of the employment agreement signed by the beneficiary and the petitioner’s Vice Chairman and Chief Operating Officer effective October 8, 2003 for a term of five years to employ the beneficiary as Executive Vice President, Sourcing and Manufacturing. The record contains organizational charts which show that the beneficiary leads the Manufacturing and Sourcing division of Victoria’s Secret Production, reports directly to the Chief Operating Officer of Victoria’s Secret Stores and the Chief Executive Officer of Mast Industries, Incorporated. In its letter, the petitioner explains that Victoria’s Secret Production is an unincorporated division of Mast Industries, Inc. The two articles discussed above under the third criterion show that the beneficiary has appeared in one public forum as Executive Vice President of Victoria’s Secret Production. This evidence establishes that the beneficiary performs a critical role for the petitioner.

As discussed above under the fifth criterion, the record shows that Limited Brands and Victoria’s Secret are influential and commercially successful companies. The petitioner submitted numerous press articles that discuss the business activities, high rankings and commercial success of Limited Brands and Victoria’s Secret, including articles from *Forbes*, *Women’s Wear Daily*, *Fortune* and *Fortune Small Business*. These documents indicate that Limited Brands and Victoria’s Secret are companies with distinguished reputations in the United

¹ Although the fact does not influence our decision in this case, we note that this report is a copy of the same report submitted with the petitioner’s previous petition for the beneficiary, LIN 01 268 52666, which was filed on September 14, 2001, denied by the director on April 4, 2002 and the appeal of which was denied on October 8, 2002 by this office.

States. Hence, the record establishes that the beneficiary performs a critical role for distinguished companies in a manner consistent with sustained national acclaim. Accordingly, the beneficiary meets this criterion.

(ix) Evidence that the alien has commanded a high salary or other significantly high remuneration for services, in relation to others in the field.

The petitioner submitted numerous documents to show that the beneficiary's alleged salary and additional remuneration are comparable to the compensation earned by top executives in his field in the United States, but the petitioner failed to adequately document the beneficiary's actual salary and other remuneration. The submitted employment contract states that the beneficiary's annual base salary is \$420,000, that he is granted 10,000 restricted shares of the petitioner's common stock, and that he is entitled to participate in "the Company's applicable incentive compensation plan at a target level of Fifty Percent (50%)." Yet the record contains no primary evidence of the beneficiary's income and other remuneration from the petitioner. The submitted 2002 federal income tax return of the beneficiary and his wife shows an adjusted gross income of \$678,127, but the petitioner submitted no W-2 forms, pay statements or other evidence of the actual source of this income. The submitted excerpt from Limited Brands's 2002 and 2004 Proxy Statements (Pursuant to Section 14(a) of the Securities and Exchange Act of 1934) do not include the beneficiary in the printed summary compensation tables for the company's executives.

On appeal, counsel maintains that the beneficiary "is one of the top-paid executives in the industry as well as in his field" and that the beneficiary "(at the time of the petition) earned a base salary of \$420,000 per year (plus incentive compensation and benefits)," but again submits no documentation of the petitioner's income and other remuneration. Without documentary evidence to support the claim, the assertions of counsel will not satisfy the petitioner's burden of proof. The unsupported assertions of counsel do not constitute evidence. *Matter of Obaigbena*, 19 I&N Dec. 533, 534 (BIA 1988); *Matter of Laureano*, 19 I&N Dec. 1 (BIA 1983); *Matter of Ramirez-Sanchez*, 17 I&N Dec. 503, 506 (BIA 1980). The record does not adequately document the beneficiary's actual income and other remuneration from the petitioner during the course of his employment. Consequently, we cannot determine whether or not his purported salary and remuneration are significantly higher than that of other executives in the apparel industry or comparable to such executives at the very top of the beneficiary's field. Accordingly, the beneficiary does not meet this criterion.

An immigrant visa will be granted to an alien under section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), only if the alien can establish extraordinary ability through extensive documentation of sustained national or international acclaim demonstrating that the alien has risen to the very top of his or her field. The evidence in this case indicates that the beneficiary performs a critical role as an executive for two nationally distinguished companies in the apparel industry. However, the record does not establish that the beneficiary has achieved sustained national or international acclaim placing him at the very top of his field. He is thus ineligible for classification as an alien with extraordinary ability pursuant to section 203(b)(1)(A) of the Act, 8 U.S.C. § 1153(b)(1)(A), and his petition may not be approved.

The burden of proof in visa petition proceedings remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.